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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 9, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket No. 96-151
RM-8808
Bear Creek and Pocono Pines, Pennsylvania

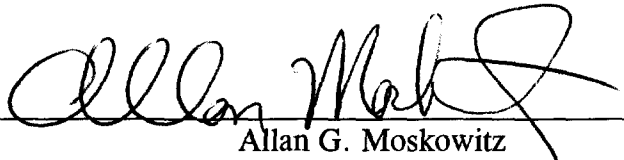
Dear Mr. Caton:

On behalf of Keymarket of NEPA, Inc., there is transmitted herewith an original and four (4) copies of its "Counterproposal" in the above-referenced docket.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

By: 
Allan G. Moskowitz

Enclosure

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-151
Table of Allotments,)	
FM Broadcast Stations.	)	RM-8808
(Bear Creek and Pocono Pines,)	
Pennsylvania))	

TO: Chief, Allocations Branch

COUNTERPROPOSAL

Keymarket of NEPA, Inc. ("Keymarket"), by its counsel, hereby files a Counterproposal to the Notice of Proposed Rule Making, DA-96845, released July 19, 1996 ("NPRM") in the above-referenced docket, which proposed the allotment of Channel 290A to Bear Creek, Pennsylvania, as that community's first local aural service, "if it is determined to be a community for allotment purposes." Keymarket respectfully requests that Channel 290A be allotted instead to Pocono Pines, Pennsylvania, as that community's first local aural service. Keymarket hereby certifies that it will apply for Channel 290A at Pocono Pines, Pennsylvania, and will construct the facility if its application is granted. In support thereof, the following is respectfully shown:

1. Attached hereto as Exhibit 1 is the engineering statement of William J. Getz of Carl T. Jones Corporation, which indicates that Channel 290A can be allotted to Pocono Pines, Pennsylvania, consistent with the Commission's domestic minimum distance separation requirements with a site restriction of 13.7 kilometers west.

2. Pocono Pines, Pennsylvania, is a “census designated place” listed in the United States 1990 Census with a population of 824 persons (See Exhibit 2) and has a United States Post Office. It is well established that community status is generally satisfied if a place is listed in the U.S. Census as a “census designated place”. See, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982) at 101, recon. denied, 56 RR 2d 448 (1984); Greenwood, SC, et al., 2 FCC Rcd 3583 (1987); and Essex, New York, 4 FCC Rcd 5775 (1989).

3. In contrast, as indicated in the Commission’s July 19, 1996 NPRM in this proceeding, Bear Creek, Pennsylvania (to be distinguished from “Bear Creek Township”) is not listed in the 1990 U.S. Census but is only listed in the 1995 Rand McNally Commercial Atlas with a population of 260 persons. Furthermore, even if the “community” status of Bear Creek is established pursuant to Commission precedent, it is clear that Pocono Pines, Pennsylvania, is over three times larger. Therefore, Pocono Pines should be favored based on that factor alone. See, e.g., Bostwick and Good Hope Georgia, 6 FCC Rcd 5796 (1991); Three Oakes and Bridgeman, Michigan, 5 FCC Rcd 1004 (1990); and Clarkesville and Lane, Indiana, 4 FCC Rcd 4968 (1989). These cases demonstrate that the larger populated community is generally considered to be the most important indication of a greater need for local service.

4. Consequently, Pocono Pines, Pennsylvania, should be preferred over Bear Creek, Pennsylvania, because (1) Bear Creek, Pennsylvania, is not a community for allocation purposes¹ and Pocono Pines, Pennsylvania, has been recognized by the U.S. Census Bureau as

¹ See, Vimville, Mississippi, 48 FR 5974 (1983); and Hannibal, Ohio, 6 FCC Rcd 2144 (1991).

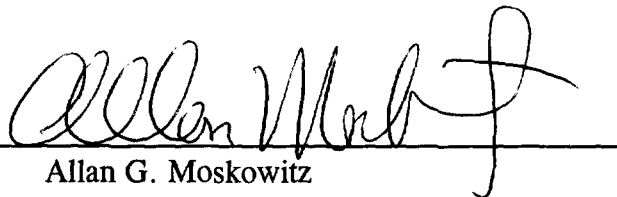
a census designated place, and (2) even if Bear Creek is, arguendo, determined to be a community for allotment purposes, Pocono Pines has a significantly larger population (824 vs. 260 persons), and, therefore, Channel 290A should be allotted to Pocono Pines, Pennsylvania, as that community's first local service.

Conclusion

5. Keymarket of NEPA, Inc. affirms that it has a present intention to apply for Channel 290A, if allotted to Pocono Pines, Pennsylvania, and to construct the facility, if granted the construction permit. Accordingly, Keymarket of NEPA, Inc. urges the Commission to allot Channel 290A to Pocono Pines, Pennsylvania, as its first local service.

Respectfully submitted,

KEYMARKET OF NEPA, INC.

By: 
Allan G. Moskowitz

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP
901 Fifteenth Street, N.W., Suite 1100
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September 9, 1996

EXHIBIT 1

CARL T. JONES
CORPORATION

STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF COMMENTS
AND COUNTERPROPOSAL
IN MM DOCKET NO. 96-151

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by Keymarket of NEPA, Inc. ("Keymarket"), licensee of WKRF(FM), Tobyhanna, Pennsylvania, to prepare this statement in support of Comments in MM Docket No. 96-151.

On July 19, 1996, the Commission issued a *Notice of Proposed Rulemaking* in response to a Petition to Amend the FM Table of Allotments filed by Victor A. Michael, Jr ("Victor Michael"). The comment date was established as September 9, 1996. The Victor Michael Petition requested that Section 73.202(b) of the FCC Rules be modified in the following manner:

	<u>Present</u>	<u>Proposed</u>
Bear Creek, Pennsylvania	----	290A

Keymarket submits that Bear Creek is not qualified as a "community" for allotment purposes. Keymarket submits the counterproposal described herein to be considered in lieu of the Victor Michael proposal. Keymarket proposes that Channel

STATEMENT OF WILLIAM J. GETZ
PAGE 2

290A be allotted to Pocono Pines, Pennsylvania, as that community's first local service. Pocono Pines is a census designated place with a 1990 population of 824 persons.


An engineering study of all pertinent allotments and assignments and applications revealed that Channel 290A can be allotted to Pocono Pines, Pennsylvania, with a site restriction of 13.7 kilometers west.¹

Accordingly, Keymarket proposes that Section 73.202(b) of the FCC Rules be modified in the following manner:

	<u>Present</u>	<u>Proposed</u>
Pocono Pines, Pennsylvania	----	290A

This statement was prepared by me or under my direct supervision and is believed to be true and correct.

DATED: September 6, 1996



William J. Getz

¹ The allotment reference coordinates for Channel 290A at Pocono Pines, Pennsylvania, are 41° 07' 27" N.L. and 75° 37' 00" W.L.

EXHIBIT 2

Table 8. Population and Housing Units, 1970 to 1990; Area Measurements and Density: 1990—Con.

(For information concerning historical counts, see "Data Notes." Density is computed using land area. For definitions of terms and meanings of symbols, see text.)

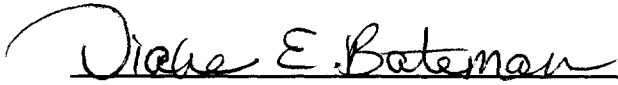
State County County Subdivision Place	Population			Housing units			1990 area measurements		
	1990	1980	1970	1990	1980	1970	Total area		Land area
							Square kilometers	Square miles	
Allegheny County	46 197	46 908	45 268	19 641	18 544	15 886	1 070.9	413.5	1 063.7
Armagh township	3 627	3 710	3 385	1 836	1 695	1 275	240.7	92.9	240.3
Atsion CDP	1 456	1 594	1 575	680	621	540	1.7	.7	1.7
Branton township	1 427	1 426	1 224	680	590	440	86.3	33.3	85.0
Brown township	3 320	3 003	2 742	1 326	1 126	918	85.9	33.2	85.9
Brookville CDP	1 038	1 023	...	425	420	...	4.8	1.9	4.8
Burkholder township	2 197	2 457	2 407	955	973	871	2.0	1.1	2.8
Decatur township	2 735	2 513	2 216	1 046	881	670	117.1	45.2	117.1
Derry township	7 650	8 188	7 877	3 055	2 902	2 587	80.8	31.2	80.6
Highland Park CDP	1 583	1 879	1 704	642	665	594	1.9	.7	1.9
Yonkers CDP	1 150	1 385	1 363	455	483	445	1.2	.5	1.2
Granville township	5 090	5 116	4 626	2 069	1 871	1 464	105.8	40.9	103.9
Juniata terrace borough	556	631	733	258	251	250	.3	.1	.3
Kiefer borough	314	364	369	149	145	123	.7	.3	.7
Lewisburg township	9 341	9 830	11 098	4 476	4 576	4 449	5.2	2.0	5.2
McKeesport borough	408	447	486	179	183	189	.3	.1	.2
Marysville township	1 637	1 590	1 308	516	488	360	61.7	23.8	61.7
Newton Hamilton borough	287	317	280	114	114	100	.5	.2	.4
Oliver township	1 822	1 774	1 528	760	720	552	90.7	35.0	89.5
Union township	3 265	3 131	2 965	1 175	1 082	874	64.1	25.5	66.1
Belleville CDP	1 589	1 689	1 817	596	630	582	5.8	2.2	5.8
Wayne township	2 521	2 491	1 824	1 055	969	684	125.9	48.6	124.0
Monroe County	95 789	69 409	45 422	54 823	37 222	21 847	1 595.5	618.0	1 573.0
Barratt township	3 214	3 273	2 452	1 982	1 789	1 193	137.8	53.2	136.2
Mount Pleasant CDP	1 042	...	...	489	...	...	4.8	1.8	4.8
Cherryhill township	8 798	4 324	2 021	3 984	2 100	1 080	96.9	37.4	96.6
Brookville CDP	1 389	...	...	578	...	...	11.2	4.3	11.1
Coalbrook township	6 756	3 993	1 626	7 057	3 561	734	227.0	87.7	222.1
Delaware Water Gap borough	733	597	533	328	330	202	4.5	1.7	4.5
East Stroudsburg borough	8 781	8 039	7 894	2 993	2 590	2 306	7.5	2.9	7.4
Elford township	2 282	1 518	998	884	674	476	63.0	24.3	63.0
Harrison township	6 681	5 138	2 985	2 771	2 205	1 294	99.7	38.5	99.3
Jackson township	3 757	2 315	1 212	1 970	1 143	525	77.3	29.8	76.1
Middle Smithfield township	6 382	3 497	1 508	4 526	2 489	1 377	140.2	54.1	137.6
Mount Pleasant borough	1 795	1 237	1 019	1 119	578	478	9.8	3.5	9.0
Paradise township	2 251	1 983	1 207	1 317	1 155	686	56.3	21.7	56.1
Pottsville township	7 529	5 233	1 870	3 557	2 653	981	88.5	34.2	88.0
Park township	4 517	3 265	1 284	2 246	1 762	872	78.0	30.1	77.1
Pike township	1 633	684	377	1 080	554	233	65.6	25.3	65.1
Ross township	3 696	2 267	998	1 416	859	383	58.7	22.7	58.6
Smithfield township	4 882	3 446	2 285	2 382	1 678	1 124	61.9	23.9	60.0
Stewart township	10 600	9 150	7 525	4 894	3 655	2 683	81.4	31.4	80.8
Arlington Heights CDP	4 766	1 198	...	2 015	467	...	13.7	5.3	13.7
Stroudsburg borough	5 312	5 148	5 451	2 550	2 498	2 203	4.7	1.8	4.6
Tobyhanna township	4 318	3 302	1 848	5 671	3 988	1 998	136.8	52.8	130.8
Pottsville CDP	824	...	...	1 776	...	...	11.5	4.4	10.4
Turnersburg township	2 080	980	317	2 196	1 071	277	100.9	39.0	100.1

CERTIFICATE OF SERVICE

I, Diane E. Bateman, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that I have, on this 9th day of September, 1996, caused the foregoing "Counterproposal" to be served by First Class U.S. Mail, to the following:

Mr. John A. Karousos *
Chief, Allocations Branch
Federal Communications Commission
2000 M Street, N.W.
Room 536
Washington, D.C. 20554

Victor A. Michael, Jr.
7901 Stoneridge Drive
Cheyenne, WY 82001



Diane E. Bateman

*** VIA HAND-DELIVERY**